

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 71

Introduced by Assembly Member Dymally

December 4, 2006

~~An act to amend Section 1182.12 of the Labor Code, relating to employment. An act to add Sections 17053.101 and 23601 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 71, as amended, Dymally. ~~Minimum wage adjustment. Income and corporation tax credits: employee health insurance.~~

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes to a qualified small employer, as defined, in an amount equal to the applicable percentage, as defined, of the amount paid by the employer during the taxable year for qualified employee health insurance expenses, as defined.

This bill would take effect immediately as a tax levy.

~~Under existing law, the minimum wage is \$7.50 per hour on and after January 1, 2007, and \$8.00 per hour on and after January 1, 2008. Existing law authorizes the Industrial Welfare Commission to determine minimum wages in accordance with a prescribed procedure that includes the selection of wage boards to consider and make recommendations regarding wage issues.~~

~~This bill would, beginning January 1, 2009, provide for the automatic adjustment of the minimum wage on January 1 of each year, which~~

would be calculated by multiplying the minimum wage by the previous year's percentage of inflation.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. This act shall be known, and may be cited, as the*
2 *“Small Business Health Care Tax Credit Act”.*

3 *SEC. 2. Section 17053.101 is added to the Revenue and*
4 *Taxation Code, to read:*

5 *17053.101. (a) There shall be allowed to a qualified small*
6 *employer a credit against the “net tax,” as defined by Section*
7 *17039, in an amount equal to the applicable percentage of the*
8 *amount paid by the employer during the taxable year for qualified*
9 *employee health insurance expenses.*

10 *(b) For purposes of subdivision (a), the applicable percentage*
11 *shall be:*

12 *(1) Fifty percent in the case of an employer with less than 10*
13 *qualified employees.*

14 *(2) Twenty-five percent in the case of an employer with more*
15 *than nine but less than 25 qualified employees.*

16 *(3) Twenty percent in the case of an employer with more than*
17 *24 but less than 50 qualified employees.*

18 *(c) The amount of qualified employee health insurance expenses*
19 *taken into account under subdivision (a) with respect to any*
20 *qualified employee for any taxable year shall not exceed:*

21 *(1) Four thousand dollars (\$4,000) for self-only coverage.*

22 *(2) Ten thousand dollars (\$10,000) for family coverage.*

23 *(d) For purposes of this section:*

24 *(1) (A) “Qualified small employer” means any small employer*
25 *that does both of the following:*

26 *(i) Provides eligibility for health insurance coverage, after any*
27 *waiting period as defined in Section 9801(b)(4) of the Internal*
28 *Revenue Code, to all qualified employees of the employer.*

29 *(ii) Pays at least 50 percent of the cost of that coverage for each*
30 *qualified employee.*

31 *(B) (i) “Small employer” means, with respect to any taxable*
32 *year, any employer if both of the following apply:*

1 (I) The aggregate gross assets of the employer during the
2 preceding three taxable years do not exceed five million dollars
3 (\$5,000,000).

4 (II) The employer employed an average of more than one but
5 less than 50 qualified employees on business days during the
6 preceding taxable year.

7 (ii) For purposes of subclause (I) of clause (i) “aggregate gross
8 assets” shall have the meaning given that term by Section
9 1202(d)(2) of the Internal Revenue Code.

10 (iii) For purposes of subclause (II) of clause (i) both of the
11 following shall apply:

12 (I) A preceding taxable year may be taken into account only if
13 the person operated as an employer throughout that year.

14 (II) In the case of a person that did not operate as an employer
15 throughout the preceding taxable year, the determination of
16 whether the person is a qualified small employer shall be based
17 on the average number of employees that it is reasonably expected
18 that person will employ on business days in the current taxable
19 year.

20 (iv) All persons treated as a single employer under subsection
21 (a) or (b) of Section 52 of the Internal Revenue Code or subsection
22 (m) or (o) of Section 414 of the Internal Revenue Code shall be
23 treated as one person for purposes of this subparagraph.

24 (v) The Franchise Tax Board may prescribe rules and
25 regulations that provide for references in this subparagraph to a
26 small employer to be treated as including references to
27 predecessors of the small employer.

28 (2) (A) “Qualified employee health insurance expenses” means
29 any amount paid by an employer for health insurance coverage
30 to the extent that amount is attributable to coverage provided to
31 any employee while the employee is a qualified employee.

32 (B) No amount paid or incurred for health insurance coverage
33 pursuant to a salary reduction arrangement shall be taken into
34 account under subparagraph (A).

35 (C) “Health insurance coverage” has the meaning given that
36 term by Section 9832(b)(1) of the Internal Revenue Code.

37 (3) (A) “Qualified employee” means an employee of a qualified
38 small employer who, with respect to any period, is not provided
39 health insurance coverage under any of the following:

40 (i) A health plan of the employee’s spouse.

1 (ii) Title XVIII, XIX, or XXI of the Social Security Act.

2 (iii) Chapter 17 of Title 38 of the United States Code.

3 (iv) Chapter 55 of Title 10 of the United States Code.

4 (v) Chapter 89 of Title 5 of the United States Code.

5 (vi) Any other law.

6 (B) (i) “Employee” means any individual, with respect to any
7 calendar year, who is reasonably expected to receive not more
8 than fifty thousand dollars (\$50,000) of compensation from the
9 qualified small employer during that year.

10 (ii) “Employee” shall not include an employee within the
11 meaning of Section 401(c)(1) of the Internal Revenue Code.

12 (iii) “Employee” includes a leased employee within the meaning
13 of Section 414(n) of the Internal Revenue Code.

14 (C) “Compensation” means amounts described in Section
15 6051(a)(3) of the Internal Revenue Code.

16 (D) (i) In the case of each taxable year beginning on or January
17 1, 2008, the fifty thousand dollar (\$50,000) amount in clause (i)
18 of subparagraph (B) shall be increased by an amount equal to fifty
19 thousand dollars (\$50,000) multiplied by the cost-of-living
20 adjustment determined under Section 1(f)(3) of the Internal
21 Revenue Code for the calendar year in which the taxable year
22 begins, determined by substituting “calendar year 2006” for
23 “calendar year 1992” in subparagraph (B) of Section 1(f)(3).

24 (ii) If any amount as adjusted under clause (i) is not a multiple
25 of one thousand dollars (\$1,000), that amount shall be rounded
26 to the next lowest multiple of one thousand dollars (\$1,000).

27 (4) Subdivision (a) shall not apply to a qualified small employer
28 for any period unless at all times during that period health
29 insurance coverage is available to all qualified employees of the
30 employer under similar terms.

31 (e) No deduction or credit under any other provision of this part
32 shall be allowed with respect to qualified employee health
33 insurance expenses taken into account under this section.

34 (f) In this case where the credit allowed by this section exceeds
35 the “net tax,” the excess may be carried over to reduce the “net
36 tax” in the following year, and succeeding years if necessary, until
37 the credit is exhausted.

38 SEC. 3. Section 23601 is added to the Revenue and Taxation
39 Code, to read:

1 23601. (a) *There shall be allowed to a qualified small employer*
2 *a credit against their “tax,” as defined by Section 23036, in an*
3 *amount equal to the applicable percentage of the amount paid by*
4 *the employer during the taxable year for qualified employee health*
5 *insurance expenses.*

6 (b) *For purposes of subdivision (a), the applicable percentage*
7 *shall be:*

8 (1) *Fifty percent in the case of an employer with less than 10*
9 *qualified employees.*

10 (2) *Twenty-five percent in the case of an employer with more*
11 *than nine but less than 25 qualified employees.*

12 (3) *Twenty percent in the case of an employer with more than*
13 *24 but less than 50 qualified employees.*

14 (c) *The amount of qualified employee health insurance expenses*
15 *taken into account under subdivision (a) with respect to any*
16 *qualified employee for any taxable year shall not exceed:*

17 (1) *Four thousand dollars (\$4,000) for self-only coverage.*

18 (2) *Ten thousand dollars (\$10,000) for family coverage.*

19 (d) *For purposes of this section:*

20 (1) (A) *“Qualified small employer” means any small employer*
21 *that does both of the following:*

22 (i) *Provides eligibility for health insurance coverage, after any*
23 *waiting period as defined in Section 9801(b)(4) of the Internal*
24 *Revenue Code, to all qualified employees of the employer.*

25 (ii) *Pays at least 50 percent of the cost of that coverage for each*
26 *qualified employee.*

27 (B) (i) *“Small employer” means, with respect to any taxable*
28 *year, any employer if both of the following apply:*

29 (I) *The aggregate gross assets of the employer during the*
30 *preceding three taxable years do not exceed five million dollars*
31 *(\$5,000,000).*

32 (II) *The employer employed an average of more than one but*
33 *less than 50 qualified employees on business days during the*
34 *preceding taxable year.*

35 (ii) *For purposes of subclause (I) of clause (i) “aggregate gross*
36 *assets” shall have meaning given that term by Section 1202(d)(2)*
37 *of the Internal Revenue Code.*

38 (iii) *For purposes of subclause (II) of clause (i) both of the*
39 *following shall apply:*

1 (I) A preceding taxable year may be taken into account only if
2 the employer was in existence throughout that year.

3 (II) In the case of an employer that was not in existence
4 throughout the preceding taxable year, the determination of
5 whether the employer is a qualified small employer shall be based
6 on the average number of employees that it is reasonably expected
7 that employer will employ on business days in the current taxable
8 year.

9 (iv) All persons treated as a single employer under subsection
10 (a) or (b) of Section 52 of the Internal Revenue Code or subsection
11 (m) or (o) of Section 414 of the Internal Revenue Code shall be
12 treated as one person for purposes of this subparagraph.

13 (v) The Franchise Tax Board may prescribe rules and
14 regulations that provide for references in this subparagraph to a
15 small employer to be treated as including references to
16 predecessors of the small employer.

17 (2) (A) “Qualified employee health insurance expenses” means
18 any amount paid by an employer for health insurance coverage
19 to the extent that amount is attributable to coverage provided to
20 any employee while the employee is a qualified employee.

21 (B) No amount paid or incurred for health insurance coverage
22 pursuant to a salary reduction arrangement shall be taken into
23 account under subparagraph (A).

24 (C) “Health insurance coverage” has the meaning given that
25 term by Section 9832(b)(1) of the Internal Revenue Code.

26 (3) (A) “Qualified employee” means an employee of a qualified
27 small employer who, with respect to any period, is not provided
28 health insurance coverage under any of the following:

29 (i) A health plan of the employee’s spouse.

30 (ii) Title XVIII, XIX, or XXI of the Social Security Act.

31 (iii) Chapter 17 of Title 38 of the United States Code.

32 (iv) Chapter 55 of Title 10 of the United States Code.

33 (v) Chapter 89 of Title 5 of the United States Code.

34 (vi) Any other law.

35 (B) (i) “Employee” means any individual, with respect to any
36 calendar year, who is reasonably expected to receive not more
37 than fifty thousand dollars (\$50,000) of compensation from the
38 qualified small employer during that year.

39 (ii) “Employee” shall not include an employee within the
40 meaning of Section 401(c)(1) of the Internal Revenue Code.

1 (iii) "Employee" includes a leased employee within the meaning
2 of Section 414(n) of the Internal Revenue Code.

3 (C) "Compensation" means amounts described in Section
4 6051(a)(3) of the Internal Revenue Code.

5 (D) (i) In the case of each taxable year beginning on or after
6 January 1, 2008, the fifty thousand dollar (\$50,000) amount in
7 clause (i) of subparagraph (B) shall be increased by an amount
8 equal to fifty thousand dollars (\$50,000) multiplied by the
9 cost-of-living adjustment determined under Section 1(f)(3) of the
10 Internal Revenue Code for the calendar year in which the taxable
11 year begins, determined by substituting "calendar year 2006" for
12 "calendar year 1992" in subparagraph (B) of Section 1(f)(3).

13 (ii) If any amount as adjusted under clause (i) is not a multiple
14 of one thousand dollars (\$1,000), that amount shall be rounded
15 to the next lowest multiple of one thousand dollars (\$1,000).

16 (4) Subdivision (a) shall not apply to a qualified small employer
17 for any period unless at all times during that period health
18 insurance coverage is available to all qualified employees of the
19 employer under similar terms.

20 (e) No deduction or credit under any other provision of this part
21 shall be allowed with respect to qualified employee health
22 insurance expenses taken into account under this section.

23 (f) In the case where the credit allowed by this section exceeds
24 the "tax," the excess may be carried over to reduce the "tax" in
25 the following year, and succeeding years if necessary, until the
26 credit is exhausted.

27 SEC. 4. This act provides for a tax levy within the meaning of
28 Article IV of the Constitution and shall go into immediate effect.

29 SECTION 1. ~~Section 1182.12 of the Labor Code is amended~~
30 ~~to read:~~

31 ~~1182.12. (a) Notwithstanding any other provision of this part,~~
32 ~~on and after January 1, 2007, the minimum wage for all industries~~
33 ~~shall be not less than seven dollars and fifty cents (\$7.50) per hour,~~
34 ~~and on and after January 1, 2008, the minimum wage for all~~
35 ~~industries shall be not less than eight dollars (\$8.00) per hour.~~

36 ~~(b) (1) The minimum wage shall be automatically adjusted each~~
37 ~~January 1, beginning January 1, 2009, to maintain employee~~
38 ~~purchasing power, which would otherwise be diminished by the~~
39 ~~percentage of inflation that occurred during the previous year.~~

~~(2) The minimum wage shall be automatically adjusted by multiplying the minimum wage in effect on the prior June 30 by the percentage of inflation that occurred during the previous year; adding this amount of increase to the wage from the previous year; and rounding off the product to the nearest five cents (\$0.05). The Industrial Welfare Commission shall publicize the automatically adjusted minimum wage, but if it cannot, then the Department of Industrial Relations shall do so.~~

~~(e) For purposes of subdivision (b), the following terms have the following meanings:~~

~~(1) “Percentage of inflation” means the percentage of inflation specified in the California Consumer Price Index for All Urban Consumers, as published by the Department of Industrial Relations, Division of Labor Statistics and Research, or its successor index.~~

~~(2) “Previous year” means the 12-month period that ended on March 31 of the calendar year prior to the adjustment.~~

~~(d) This section may not be construed to either preclude an increase of the minimum wage by the Industrial Welfare Commission in an amount that is greater than the rate calculated pursuant to subdivision (b) or to permit a reduction in the minimum wage.~~